

Chapter 44 Sales Representative Commission Payment Act

Part 1 General Provisions

34-44-101 Title.

This chapter is known as the "Sales Representative Commission Payment Act."

Enacted by Chapter 65, 2007 General Session

34-44-102 Definitions.

As used in this chapter:

- (1) "Business relationship" means an agreement that governs the relationship of principal and sales representative.
- (2) "Commission" means:
 - (a) compensation:
 - (i) that accrues to a sales representative;
 - (ii) for payment by a principal; and
 - (iii) at a rate expressed as a percentage of the dollar amount of sales, orders, or profits; or
 - (b) any other method of compensation agreed to between a sales representative and a principal including:
 - (i) fees for services; and
 - (ii) a retainer.
- (3)
 - (a) "Direct sales company" means a person that:
 - (i) sells, distributes, or supplies for consideration a good or service through participants:
 - (A) at different levels of distribution; or
 - (B) in accordance with a formula for compensating participants in whole or in part based on:
 - (I) the sale of a good or service; and
 - (II) the recruitment of or the performance or action of another participant; and
 - (ii)
 - (A) permits participants to recruit other participants to sell, distribute, or supply for consideration the person's good or service; or
 - (B) provides for commission, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of:
 - (I) the sale of a good or service; or
 - (II) the recruitment of or the performance or action of another participant.
 - (b) As used in this Subsection (3), "participant" means an independent agent, contractor, or distributor.
- (4) "Principal" means a person who:
 - (a) engages in any of the following activities with regard to a product or service:
 - (i) manufactures;
 - (ii) produces;
 - (iii) imports;
 - (iv) sells; or
 - (v) distributes;

- (b) establishes a business relationship with a sales representative to solicit orders for a product or a service described in Subsection (4)(a); and
 - (c) agrees to compensate a sales representative, in whole or in part, by commission.
- (5)
- (a) Except as provided in Subsection (5)(b), "sales representative" means a person who enters into a business relationship with a principal:
 - (i) to solicit orders for a product or a service described in Subsection (4)(a); and
 - (ii) under which the person is compensated, in whole or in part, by commission.
 - (b) "Sales representative" does not include:
 - (i) an employee of a principal;
 - (ii) a person licensed under Title 31A, Insurance Code;
 - (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;
 - (iv) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (v) a person who provides a product or service under a business relationship with a principal that is incident to the purchase or sale of real property;
 - (vi) a person who places an order or purchases a product or service for that person's own account for resale; or
 - (vii) an independent agent, contractor, or distributor through whom a direct sales company supplies for consideration a good or service.
- (6) "Terminates" or "termination" means the end of a business relationship between a sales representative and a principal, whether by:
- (a) agreement;
 - (b) expiration of a time period; or
 - (c) exercise of a right of termination by either the principal or the sales representative.

Amended by Chapter 438, 2019 General Session

34-44-103 Jurisdiction in courts.

An action under this chapter may be brought against a principal in a court of this state if:

- (1) the principal enters into a business relationship in this state with a sales representative to solicit orders for a product or a service; or
- (2)
- (a) a product of the principal is:
 - (i) manufactured, distributed, sold, or received in this state; or
 - (ii) imported to or from this state; or
 - (b) a service of the principal is provided in this state.

Enacted by Chapter 65, 2007 General Session

34-44-104 Void provisions.

Any of the following provisions in an agreement between a sales representative and a principal is void:

- (1) an express waiver of any right under this chapter;
- (2) for a writing required by Section 34-44-201 that is entered into in this state, a provision that makes the sales representative subject to the laws of another state; or
- (3) a requirement that the sales representative pursue a claim under this chapter in a court not located in the state.

Enacted by Chapter 65, 2007 General Session

Part 2 Requirements and Prohibitions

34-44-201 Written business relationship.

- (1) The business relationship between a sales representative and a principal shall be in a writing signed by both the principal and the sales representative.
- (2) The writing required by Subsection (1) shall set forth the method by which the sales representative's commission is:
 - (a) computed; and
 - (b) paid.
- (3) The principal shall provide the sales representative with a copy of the signed writing required by Subsection (1).

Enacted by Chapter 65, 2007 General Session

34-44-202 Payment of commission -- Payment on termination -- Settlement.

- (1) The principal shall pay a sales representative all commissions due to the sales representative during the time the business relationship between the principal and sales representative is in effect in accordance with the writing required by Section 34-44-201.
- (2) If a business relationship between a principal and sales representative terminates, the principal shall pay to the sales representative:
 - (a) within 30 days after the day on which the termination is effective, all commissions due on the day on which the termination is effective; and
 - (b) within 14 days after the day on which a commission becomes due if the commission is due after the day on which the termination is effective.
- (3)
 - (a) Unless payment is made pursuant to a binding and final written settlement agreement and release, the acceptance by a sales representative of a partial commission paid by the principal under the business relationship does not constitute a release as to the balance of any commission that the sales representative claims is due because of the business relationship.
 - (b) A full release of all commission claims required by a principal as a condition to a partial commission payment is void.

Enacted by Chapter 65, 2007 General Session

34-44-203 Revocable offer of commission.

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon under the business relationship if:

- (1) the principal revokes the offer of commission;
- (2) the sales representative establishes that the revocation is for a purpose of avoiding payment of the commission;
- (3) the revocation occurs after the principal obtains an order for the principal's product or service through the efforts of the sales representative; and

- (4) the principal's product or service that is the subject of the order is provided to and paid for by a customer.

Enacted by Chapter 65, 2007 General Session

Part 3 Remedies

34-44-301 Failure to pay commission.

- (1) A sales representative may bring a civil action in a court of competent jurisdiction against a principal for failure by the principal to comply with:
 - (a) any provision of an agreement relating to the payment of commission; or
 - (b) Subsection 34-44-202(1) or (2).
- (2) If a principal is found liable under Subsection (1), the principal is liable to the sales representative for:
 - (a) three times an amount calculated by:
 - (i) determining the sum of unpaid commission owed to the sales representative; and
 - (ii) subtracting from the amount determined under Subsection (2)(a)(i) money the sales representative owes the principal;
 - (b) reasonable attorney fees; and
 - (c) court costs.

Enacted by Chapter 65, 2007 General Session

34-44-302 Other remedies.

This chapter does not:

- (1) invalidate or restrict any alternative or additional right or remedy available to a sales representative; or
- (2) preclude a sales representative from seeking to recover in an action on all claims against a principal.

Enacted by Chapter 65, 2007 General Session